

EXPLANATION OF EMERGENCY AMENDMENTS TO THE SB 81 2007 LOCAL YOUTHFUL OFFENDER REHABILITATIVE FACILITIES PROGRAM REGULATIONS

GENERAL COMMENTS

At the request of the Department of Finance, throughout these regulations, the term "financing" or "financed" replaced the terms "funds," "funded" or "funding."

ARTICLE 1, GENERAL PROVISIONS

Section 1806, Definitions.

The definition for "Concept drawings" is being added to describe the drawings or architectural renderings that, along with performance criteria, participating counties will develop to describe their design-build projects.

The definition for "Construction bid" is being added to describe the building contractor's bid for a design-bid-build project.

The definition for "Design-bid-build" is being added to describe the building process generally used to construct a project. It is the building process where the project is designed by an architectural firm that produces 100 percent complete construction documents; the project is put out to bid; and a bid is awarded to a construction firm to build the project. Assembly Bill 1628 added language to Welfare and Institutions Code Section 1975 to allow the use of the design-build construction process with SB 81 lease-revenue bond financing. Therefore, titles of several sections were amended to reflect that a particular regulation has been amended to specifically describe design-bid-build requirements.

The definition for "Design-build" is being added to describe the building process where the project is designed and built by the same contracted entity. For these regulations there are some distinct requirements for the "design-build" process that differ from the "design-bid-build process." Therefore, new regulations were added to describe the design-build requirements.

The definition for "Ground lease" is being amended to add "Board-financed" before "county juvenile facility" to make it clear that the property upon which the project will be constructed will be financed through the State Pooled Money Investment Board. In addition, the term (the "site") was deleted from this regulation because it was determined to be redundant.

The definition for "Performance criteria" is being added to describe the information prepared pursuant to Public Contract Code 20133 that is provided by a participating county that fully describes the scope of the proposed design-build project.

The definition for "Preliminary drawings" is being added to explain a term used by the State Public Works Board to describe the first set of documents submitted by the participating county in the design-build process.

In the definition for "Rated capacity," the Title 24 citation was amended.

The definition for "Site" is being amended to add "Board-financed" before "county juvenile facility" to make it clear that the property upon which the project will be constructed will be financed through the State Pooled Money Investment Board.

In the definition for "Special use beds," the Title 24 citation was amended.

The definition for "Working drawings" is being added to explain a term used by the State Public Works Board to describe the final set of documents from the participating county used in the design-build process.

The definition for "Youthful Offender Rehabilitative Facilities" was changed due to Department of Finance's concerns that the term "non-secure bed/program space" too narrowly defined what type of facilities could be constructed through this construction program.

ARTICLE 3, APPLICATION TO PARTICIPATE IN 2007 LOCAL YOUTHFUL OFFENDER REHABILITATIVE FACILITY CONSTRUCTION FINANCING PROGRAM

Section 1847, Pre-funding Requirements.

Assembly Bill 1628 added language to Welfare and Institutions Code Section 1975 to allow the use of the design-build construction process with SB 81 lease-revenue bond financing. As a result of this change, it became necessary to revise existing regulations and create new regulations to describe the different requirements for the design-bid-build and the design-build processes.

Because this regulation is specific to the design-bid-build process it was necessary to change the title to "Steps to Proceed with Construction for Design-Bid-Build Projects." Subsection (a)(2) was amended to correct a Title 24 citation. A new subsection (a)(3) was added to require that the State Public Works Board approve the construction bid awarded by the county. This is an important step in the lease-revenue bond process. The existing subsection (a)(3) was deleted because the review and approving of the specified documents: the summary of bids received; a statement explaining to which contractor the bid was awarded and why; and the copy of the notice to proceed issued to the contractor, is the responsibility of the State Public Works Board.

Subsection (a)(9) was deleted. The requirement that the county certify to CDCR and the Authority that the Board has determined an action was deemed unnecessary. The Board determination in this subsection is subsumed in the other actions the Board takes with regard to the project.

Section 1847.1, Steps to Proceed with Construction for Design-Build Projects.

This new regulation is being added to describe the steps to proceed with construction and the unique requirements for design-build projects.

Section 1848, Requirements for the Project Delivery and Construction Agreement.

Subsection (c) is being amended to add the term "design-build" in front of "contractors." This was done to make it clear that both the construction contractor and the design-build contractor must post payment and performance bonds.

Section 1849, Submittal of Architectural Drawings and Specifications.

This regulation requires that the Authority approve the construction document plans and specifications before state monies can be encumbered in contracts by participating counties. This is the traditional design-bid-build construction project delivery system where the county completes the design of the project, the Authority reviews the construction document drawings (architectural plans and specifications that are 100% complete) and approves the project; the county bids the project and then begins construction of the project and submits invoices in arrears for payment. Because this regulation is specific to the submittal of drawings and specifications for design-bid-build process it was necessary to change the title to "Submittal of Architectural Drawings and Specifications for Design-Bid-Build Projects."

Reference to the submittal of the Operational Program Statement in subsection (a) was deleted here but added to Section 1850 to include all of the previously required pre-construction submittals into one regulation.

In subsection (d) the Title 24 citation was corrected.

Section 1849.1, Submittal of Performance Criteria and Architectural Drawings and Specifications for Design-Build Projects.

Assembly Bill 1628 added language to Welfare and Institutions Code Section 1975 indicating that no state monies shall be encumbered in contracts let by a participating county until either final architectural plans and specifications have been approved by the CSA, and subsequent construction bids have been received (this process is addressed in Section 1849), or documents prepared by a participating county pursuant to paragraph (1) of subdivision (d) of Section 20133 of the Public Contract Code have been approved by the CSA, and a design-build contract has been awarded pursuant to that section. This new regulation addresses the design-build process. This new regulation outlines the requirements for counties to submit documents in accordance with Public Contract Code Section 20133. Once the Authority has approved the documents and a design-build contract has been awarded pursuant to that section, the participating county can begin construction of the project and submit invoices in arrears for payment.

Section 1850, Staffing Plan/Operating Cost Analysis.

The title of this regulation has been changed to "Operational Program Statement/Staffing Plan/Operating Cost Analysis for Design-Bid-Build Projects." This

regulation is now specific to design-bid-build projects and subsection (a) has been added to include the requirement to submit an Operational Program Statement. Previously a requirement in Section 1849, it was added here to include all of the previously required pre-construction submittals into one regulation.

Section 1850.1, Operational Program Statement/Staffing Plan/Operating Cost Analysis for Design-Build Projects.

Welfare and Institutions Code Section 1975 requires counties to staff and operate local juvenile facilities built through the 2007 Local Youthful Offender Rehabilitative Facilities Construction Financing Program. This new regulation is specific to design-build projects and requires that counties that utilize this construction method develop a plan that describes how the new facility will be operated (the Operational Program Statement), staffed (the Staffing Plan) and how its operation will be funded (the Operating Cost Analysis). The purpose of these documents is to encourage counties to study and analyze their facility design and its impacts on on-going costs.

The terms “post identification” and “transition team program statement” as utilized in this section are not defined as these are terms of art that have a standard use and understanding in the corrections industry. The county will also be required to submit an analysis of a thirty (30) year lifecycle operating costs and maintenance and energy costs for the proposed facility. This is to ensure that the county has considered costs beyond the construction costs, and has acknowledged the on-going operating costs of a local juvenile facility over the typical thirty (30) year lifecycle of such facilities.

Section 1852, Ground Lease.

Subsection (b) has been amended to reflect that an easement is needed over adjacent county property as necessary for the project footprint. This is an important element in the lease-revenue bond process. This subsection has also been amended to delete reference to the ground lease being in a form agreed to by the Office of the Attorney General, the Board and the Authority. This reference was determined to be unnecessary because the development of all the agreements for this construction program was a collaborative effort between all the effected State agencies and the State Public Works Board relies on the legal review from the Department of Finance.

Subsection (j) has been amended to clarify that only if a county is awarded lease-revenue financing to reimburse the county for its project, after the financing is fully paid, the ground lease will terminate and title to the local juvenile facility will vest in the county.

Section 1854, Facility Sublease.

An amendment was added to subsection (a) to provide clarity.

ARTICLE 4, ADMINISTRATION OF THE PROCEEDS OF THE STATE BOND FUNDS AND PROJECT MONITORING

Section 1856, Disbursement of the Proceeds from the Lease-Revenue Bond Funds.

Subsection (a) has been amended to apply to both the design-bid-build process and the design-build process. This amendment will require counties utilizing the design-build process to submit performance criteria or performance criteria and concept drawings for approval by the CSA pursuant to Section 1849.1. Upon approval of those documents by the Authority, and with the award of a design-build contract pursuant to Section 1849.1, the participating county can begin construction of the project and submit invoices in arrears for payment.

An amendment was made to subsection (e)(1) to allow counties to submit for payment on a schedule mutually agreed to by the Authority and the participating county.

Subsection (e)(3) was amended to reflect CSA Board action from a previous agenda item from this meeting; changing the retention amount withheld from the proceeds of the lease-revenue financing from 20% to 5% to allow counties more fiscal flexibility.

Section 1857, Pooled Money Investment Board.

The title of this regulation was changed to reflect a more accurate term. This regulation is about interim financing, not about the Pooled Money Investment Board.

Subsection (b) has been amended to clarify that this regulation applies to design-bid-build and design-build projects. Also, statutory references were corrected.

Section 1860, Accounting.

Terminology was changed in this regulation for clarity. The terms "proceeds of lease-revenue bonds" and "state bond funds" are reimbursements.

Section 1867, Completion of Project.

This regulation is being amended to clarify that it applies to both design-bid-build projects and design-build projects.

1868, Project Modifications.

This regulation was modified to clarify when invoices and progress reports are to be submitted.